



**DEPARTMENT OF DEFENSE**  
**OFFICE OF FREEDOM OF INFORMATION**  
**1155 DEFENSE PENTAGON**  
**WASHINGTON, DC 20301-1155**

JAN 10 2019

Ref: 19-F-0320

Ms. Cerissa Cafasso  
American Oversight  
1030 15<sup>th</sup> Street NW, Suite B255  
Washington, DC 20005

Dear Ms. Cafasso:

This is the final response to your November 20, 2018, Freedom of Information Act (FOIA) request, a copy of which is enclosed for your convenience. We received your request on November 20, 2018, and assigned it case number 19-F-0320. We ask that you use this number when referring to your request.

The Office of General Council (OGC), a component of the Office of the Secretary of Defense, assessed their records system and has no reason to believe that their office would have records responsive to items 1 through 6 of your request. We believe the assessment by the OGC is appropriate, therefore, a search was not conducted as they would not reasonably be expected to produce the requested records. The Secretary of Defense Communications Office (SD Comms), and the Washington Headquarters Service, Executive Services Directorate, Chief Correspondence Management Division (ESD/CMD), components of the Secretary of Defense, conducted a search of their records systems based on the information provided in items 1 through 6 in your request. After thorough searches of the electronic records and files of SD Comms and ESD/CMD, no records of the kind you described could be identified. We believe that these search methods were appropriate and could reasonably be expected to produce the requested records if they existed.

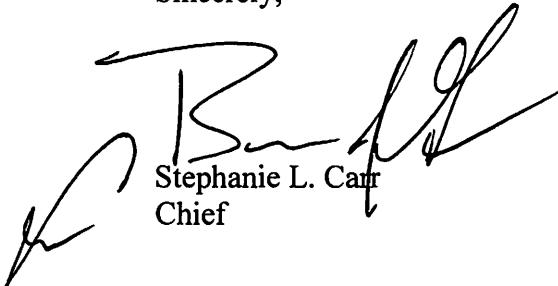
This action closes your request with this office, and there are no assessable fees associated with this response. If you are not satisfied with this response, you may contact our OSD FOIA Public Liaison, Jim Hogan, at 571-372-0462 or by email at [OSD.FOIALiaison@mail.mil](mailto:OSD.FOIALiaison@mail.mil). Also, please note that the Office of Government Information Services (OGIS) offers services to requesters who have disputes with Federal agencies. You may contact OGIS if you have concerns about the processing of your request. Their contact information is provided below:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road-OGIS  
College Park, MD 20740  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Telephone: 202-741-5770  
Fax: 202-741-5769  
Toll-free: 1-877-684-6448

You have the right to appeal to the appellate authority, Ms. Joo Chung, Director of Oversight and Compliance, Office of the Secretary of Defense, by writing directly to OCMO Office of the Chief Management Officer, 4800 Mark Center Drive, ATTN: DPCLTD, FOIA Appeals, Mailbox# 24, Alexandria, VA 22350-1700. Your appeal must be postmarked within 90 calendar days of the date of this response. Alternatively, you may email your appeal to osd.foia-appeal@mail.mil. If you use email, please include the words "FOIA Appeal" in the subject of the email. Please also reference case number 19-F-0320 in any appeal correspondence.

If you have any questions about the foregoing, please do not hesitate to contact the Action Officer assigned to your request, Ms. Jeanne Moretti, at [jeanne.moretti.civ@mail.mil](mailto:jeanne.moretti.civ@mail.mil) or at (571) 372-0419.

Sincerely,



Stephanie L. Carr  
Chief

Enclosure:  
As stated



VIA ONLINE PORTAL OR ELECTRONIC MAIL

Council on Environmental Quality  
 Freedom of Information Officer  
 722 Jackson Place NW  
 Washington, DC 20503  
[efoia@ceq.cop.gov](mailto:efoia@ceq.cop.gov)

Alexis Graves  
 U.S. Department of Agriculture  
 1400 Independence Avenue SW  
 Room 428-W, Whitten Building  
 Washington, DC 20250-0706  
[USDAFOIA@ocio.usda.gov](mailto:USDAFOIA@ocio.usda.gov)

Michael Toland, Ph.D.  
 Departmental FOIA Officer  
 Office of Privacy and Open Government  
 U.S. Department of Commerce  
 14th and Constitution Avenue NW  
 Mail Stop 52010FB  
 Washington, DC 20230  
 Via FOIAOnline

OSD/JS FOIA Requester Service Center  
 Chief, Ms. Stephanie Carr  
 Office of Freedom of Information  
 U.S. Department of Defense  
 1155 Defense Pentagon  
 Washington, DC 20301-1155  
[whs.mc-alex.esd.mbx.osd-js-foia-requester-service-center@mail.mil](mailto:whs.mc-alex.esd.mbx.osd-js-foia-requester-service-center@mail.mil)

U.S. Department of Education  
 ATTN: FOIA Public Liaison  
 Office of Management  
 Office of the Chief Privacy Officer  
 400 Maryland Avenue SW, LBJ 2E320  
 Washington, DC 20202-4536  
[EDFOIAManager@ed.gov](mailto:EDFOIAManager@ed.gov)

FOIA Requester Service Center  
 U.S. Department of Energy  
 1000 Independence Avenue SW  
 Mail Stop MA-46  
 Washington, DC 20585  
[foia-central@hq.doe.gov](mailto:foia-central@hq.doe.gov)

Records, FOIA, and Privacy Branch  
 Office of Environmental Information  
 U.S. Environmental Protection Agency  
 1200 Pennsylvania Avenue NW (2822T)  
 Washington, DC 20460  
 Via FOIAOnline

U.S. General Services Administration  
 FOIA Requester Service Center (H1F)  
 1800 F Street NW, Room 7308  
 Washington, DC 20405-0001  
 Via FOIAOnline

Michael Marquis  
 Freedom of Information Officer  
 U.S. Department of Health and Human Services  
 Hubert H. Humphrey Building, Room 729H  
 200 Independence Avenue SW  
 Washington, DC 20201  
[FOIARequest@hhs.gov](mailto:FOIARequest@hhs.gov)

The Privacy Office  
 U.S. Department of Homeland Security  
 245 Murray Lane SW  
 STOP-0655  
 Washington, DC 20528-0655  
[foia@hq.dhs.gov](mailto:foia@hq.dhs.gov)

Freedom of Information Act Office  
U.S. Department of Housing and Urban  
Development  
451 7th Street SW, Room 10139  
Washington, DC 20410-3000  
Via Online Portal

Clarice Julka  
Office of the Secretary  
U.S. Department of the Interior  
MS-7328, MIB  
1849 C Street, NW  
Washington, DC 20240  
[os\\_foia@ios.doi.gov](mailto:os_foia@ios.doi.gov)

Office of the Solicitor  
U.S. Department of Labor  
200 Constitution Avenue NW  
Room N-2420  
Washington, DC 20210  
[foiarequests@dol.gov](mailto:foiarequests@dol.gov)

Kathy Ray  
U.S. Department of Transportation  
1200 New Jersey Avenue SE  
W94-122  
Washington, DC 20590  
[ost.foia@dot.gov](mailto:ost.foia@dot.gov)

FOIA Request  
U.S. Department of the Treasury  
Washington, DC 20220  
[treasfoia@treasury.gov](mailto:treasfoia@treasury.gov)

U.S. Department of Veterans Affairs  
810 Vermont Avenue NW  
(005R1C) VACO  
Washington, DC 20420  
[vacofoiaservice@va.gov](mailto:vacofoiaservice@va.gov)  
[OSVAFOIA@va.gov](mailto:OSVAFOIA@va.gov)  
[ogcfoiarequests@va.gov](mailto:ogcfoiarequests@va.gov)

FOIA Officer  
Office of Management and Budget  
1800 G Street NW  
Washington, DC 20503  
[OMBFOIA@omb.eop.gov](mailto:OMBFOIA@omb.eop.gov)

FOIA Officer  
Office of Science and Technology Policy  
1650 Pennsylvania Avenue NW  
Washington, DC 20504  
[ostpfoia@ostp.eop.gov](mailto:ostpfoia@ostp.eop.gov)

USTR FOIA Office, GSD/RDF  
Attn: Chief FOIA Officer, Janice Kaye  
Office of the U.S. Trade Representative  
Anacostia Naval Annex, Bldg. 410/Door 123  
250 Murray Lane SW  
Washington, DC 20509  
[FOIA@ustr.eop.gov](mailto:FOIA@ustr.eop.gov)

Chief, FOIA/Privacy Act Office  
U.S. Small Business Administration  
409 3rd Street SW, 8th Floor  
Washington, DC 20416  
Via FOIAOnline

U.S. Department of State  
Office of Information Programs and Services  
A/GIS/IPS/RL  
SA-2, Suite 8100  
Washington, DC 20522-0208  
[FOIArequest@state.gov](mailto:FOIArequest@state.gov)

**Re: Freedom of Information Act Request**

Dear Freedom of Information Officers:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and your agency's implementing regulations, American Oversight makes the following request for records.

On November 19, 2018, the *Washington Post* reported that Ivanka Trump, Advisor to the President, made extensive and continuous use of a personal email account for official business during 2017.<sup>1</sup> According to the report, the only reason Ms. Trump's personal email use came to the attention of White House officials was that American Oversight submitted FOIA requests for her communications. American Oversight submits this request for records that will inform the public of the nature of Ms. Trump's personal email use for official government business and what steps the administration has taken to ensure compliance with the Presidential Records Act.

**Requested Records**

American Oversight requests that your agency produce the following within twenty business days:

1. All records reflecting communications (including but not limited to emails, email attachments, voicemail transcripts, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, WhatsApp, Signal, Facebook or Twitter Direct Messages), telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (a) any political appointees\* at your agency and (b) any person in the Office of the White House, including any person whose email address ends in @who.eop.gov, discussing, concerning, or related to Ivanka Trump (or alternatively styled "Ivanka Kushner") and her use of non-governmental email, including any email address ending in @ijkfamily.org.
2. All records reflecting communications (including but not limited to emails, email attachments, voicemail transcripts, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, WhatsApp, Signal, Facebook or Twitter Direct Messages), telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (a) any political appointees\* at your agency and (b) any person in the

<sup>1</sup> Carol D. Leonnig & Josh Dawsey, *Ivanka Trump Used a Personal Email Account to Send Hundreds of Emails About Government Business Last Year*, WASH. POST, Nov. 19, 2018, [https://www.washingtonpost.com/politics/ivanka-trump-used-a-personal-email-account-to-send-hundreds-of-emails-about-government-business-last-year/2018/11/19/6515d1e0-e7a1-11e8-a939-9469f1166f9d\\_story.html?utm\\_term=.8afa86a8271c](https://www.washingtonpost.com/politics/ivanka-trump-used-a-personal-email-account-to-send-hundreds-of-emails-about-government-business-last-year/2018/11/19/6515d1e0-e7a1-11e8-a939-9469f1166f9d_story.html?utm_term=.8afa86a8271c).

Office of the White House, including any person whose email address ends in @who.cop.gov, discussing, concerning, or related to Ivanka Trump (or alternatively styled “Ivanka Kushner”) and FOIA.

3. All records reflecting communications (including but not limited to emails, email attachments, voicemail transcripts, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, WhatsApp, Signal, Facebook or Twitter Direct Messages), telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (a) any political appointees\* at your agency and (b) any non-governmental email address attributed to Ivanka Trump (or alternatively styled “Ivanka Kushner”), including but not limited to any email address ending in @ijkfamily.org.
4. All records reflecting communications (including but not limited to emails, email attachments, voicemail transcripts, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, WhatsApp, Signal, Facebook or Twitter Direct Messages), telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) of any political appointees\* at your agency discussing, concerning, or related to Ivanka Trump (or alternatively styled “Ivanka Kushner”), FOIA, and the law firm WilmerHale. This request includes communications directly with the law firm WilmerHale.
5. All records reflecting communications (including but not limited to emails, email attachments, voicemail transcripts, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, WhatsApp, Signal, Facebook or Twitter Direct Messages), telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) of any political appointees\* at your agency discussing, concerning, or related to Ivanka Trump (or alternatively styled “Ivanka Kushner”), FOIA, and the law firm Norton Rose Fulbright. This request includes communications directly with the law firm Norton Rose Fulbright.
6. All records reflecting communications (including but not limited to emails, email attachments, voicemail transcripts, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, WhatsApp, Signal, Facebook or Twitter Direct Messages), telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) of any political appointees\* at your agency discussing, concerning, or related to Ivanka Trump (or alternatively styled “Ivanka Kushner”), FOIA, and the law firm Winston

& Strawn. This request includes communications directly with the law firm Winston & Strawn.

\*“Political appointee” should be understood as any person who is a Presidential Appointee with Senate Confirmation (PAS), a Presidential Appointee (PA), a Non-career SES, any Schedule C employees, or any persons hired under Temporary Non-career SES Appointments, Limited Term SES Appointments, or Temporary Transitional Schedule C Appointments.

Please provide all responsive records from the immediate Office of the Secretary, the Office of the Deputy Secretary, and the Office of the General Counsel (or your agency’s equivalent of each) from January 20, 2017, to the date the search is conducted.

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

Please search all records regarding agency business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA.<sup>2</sup> It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.<sup>3</sup>

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<sup>2</sup> See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

<sup>3</sup> See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work-related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)).

In addition, please note that in conducting a “reasonable search” as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered your agency’s prior FOIA practices unreasonable. **In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.<sup>1</sup>** Furthermore, agencies that have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians’ files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency’s archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that your agency use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”<sup>2</sup> If it is your position that any portion of the requested records is exempt from disclosure, American Oversight requests that you provide an index of those documents as required under *Vaughn v. Roscn*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”<sup>3</sup> Moreover, the *Vaughn* index “must describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of disclosing the sought-after information.”<sup>4</sup> Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’”<sup>5</sup>

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are

<sup>1</sup> Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

<sup>2</sup> FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

<sup>3</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

<sup>4</sup> *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

<sup>5</sup> *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.<sup>9</sup> Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight hopes to decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15<sup>th</sup> Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

#### Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's implementing regulations, American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to public understanding of those operations. Moreover, the request is primarily and fundamentally for non-commercial purposes.

American Oversight requests a waiver of fees because disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of activities of the government. The disclosure of the information sought under this request will document and reveal the operations of the federal government, including the email practices of a senior administration official and the steps taken to ensure compliance with federal records retention law—a matter that President Trump has suggested is sanctionable with imprisonment. There is profound interest in knowing the steps that the government took to ensure compliance with the Presidential Records Act, and the records responsive to this request will contribute significantly to the public's understanding of the government's activities.

This request is primarily and fundamentally not for commercial purposes, but rather the primary interest is in public disclosure of responsive records. As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight's financial interest. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to

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<sup>9</sup> *Mead Data Central*, 566 F.2d at 261.

educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.<sup>10</sup> American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content. For example, after receiving records regarding an ethics waiver received by a senior DOJ attorney,<sup>11</sup> American Oversight promptly posted the records to its website and published an analysis of what the records reflected about DOJ's process for ethics waivers.<sup>12</sup> As another example, American Oversight has a project called "Audit the Wall," where the organization is gathering and analyzing information and commenting on public releases of information related to the administration's proposed construction of a barrier along the U.S.-Mexico border.<sup>13</sup>

Accordingly, American Oversight qualifies for a fee waiver.

### Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact me at [foia@americanoversight.org](mailto:foia@americanoversight.org) or (202) 869-5244. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,



Cerissa Cafasso  
Counsel  
American Oversight

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<sup>10</sup> American Oversight currently has approximately 12,000 page likes on Facebook and 48,000 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Nov. 20, 2018); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Nov. 20, 2018).

<sup>11</sup> DOJ Civil Division Response Noel Francisco Compliance, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>.

<sup>12</sup> *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

<sup>13</sup> *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>.